Supreme Court of the United States.

WILLIAM J. BUTTFIELD,
Plaintiff in Error,

AGAINST

NEVADA N. STRANAHAN, Collector of the Port of New York,
Defendant in Error.

SIR:

Please to take notice that on the annexed petition of William J. Buttfield, a motion will be made in the Supreme Court of the United States, at the City of Washington, at 12 o'clock noon, on the first day of June, 1903, for an order advancing the argument of the appeal in the above entitled cause to such early date in the October Term, 1903, as to the Court may seem proper.

Yours, &c.,
JAMES L. BISHOP,
Counsel for Plaintiff,
Office and P. O. address,
135 Broadway,
Borough of Manhattan,
New York City.

To Hon. PHILANDER C. KNOX,
Attorney-General.

SUPREME COURT OF THE UNITED STATES.

WILLIAM J. BUTTFIELD,
Plaintiff in Error,

AGAINST

NEVADA N. STRANAHAN, Collector of the Port of New York,
Defendant in Error.

TO THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petition of WILLIAM J. BUTTFIELD, plaintiff in error in the above entitled action, respectfully shows to this Court, as follows:

Your petitioner requests that the argument of the above entitled cause, which is now upon the docket of this Court, numbered 717 may be advanced and set down for such early day in the October Term, 1903, as may appear to the Court to be convenient.

The action was brought by the plaintiff in error in the Circuit Court of the United States, Southern District of New York, at law, to recover damages for the destruction by the defendant, as Collector of the Port of New York, of eight (8) packages of tea.

The defendant justified the seizure and destruction of the teas under the Act of Congress of March 2, 1897, entitled "An Act to prevent the importation of impure and unwholesome teas." ~~The plaintiff introduced~~ Evidence was introduced upon the trial, which was uncontroverted, that the teas in question were pure, unadulterated, genuine, wholesome and fit for consumption, and that they differed from the standard only in flavor; that the grade of the tea, as judged by the style and appearance, was First Gunpowder, which is the highest grade of tea

except one; that in quality it was a good Teenkai, 7
which is the seventh grade of country green teas in
quality, there being ten lower grades; that the
standard established, under the act, was of the fifth
or sixth grade in quality and excluded at least ten
grades of tea which have been and are ordinary arti-
cles of commerce, and which are pure, wholesome
and fit for consumption, and if enforced would have
excluded from importation into the United States
two-thirds of the entire crop of teas subject to the
particular standard applied in this case.

Your petitioner claims that the said Act of Con-
gress affords no protection to the defendant in the
destruction of the said teas, because the same is un-
constitutional for several reasons: First, because the 8
plaintiff was thereby deprived of his prop-
erty without due process of law; second, be-
cause the authority conferred upon the Secretary
of the Treasury to establish a standard which, in
his discretion, might exclude teas solely on the
ground of quality, that is, taste and flavor, was a
delegation of legislative power and was not a regu-
lation of commerce by Congress; and third, that
Congress had no power, under its authority to reg-
ulate commerce, to prohibit the importation of a
pure and wholesome article of food, except in the
exercise of its power to lay and collect taxes and to
provide for the common defense and general wel-
fare, and it appears that said act was not passed 9
for either of said purposes.

The plaintiff also contended that the Secretary of
the Treasury had no authority, under the said Act of
March 2, 1897, to establish a standard which would
exclude teas manifestly and unquestionably pure,
wholesome and fit for consumption, and that the
Secretary, having acted in excess of his powers, his
act afforded no protection to the defendant.

The questions presented in this case are of great
public importance and of special importance to im-
porters of teas into the United States.

An attempt has previously been made to present

to this Court the question of the constitutionality of the Act of March 2, 1897, in the case of Cruikshank *vs.* Bidwell, reported in 176 U. S., 78. In that case the Court held that the plaintiff had an adequate remedy at law, and did not consider the questions raised by the plaintiff as to the constitutionality of the act.

Large quantities of teas which are concededly pure and wholesome, and which are inferior to the standard in taste and flavor only, are constantly being excluded from importation into the United States under the authority of this act. The Secretary of the Treasury has ruled that in establishing the standard provided for in the act he may exclude the lowest grades of tea without considering the question of their purity or fitness for consumption, and he has declined to define what is meant by the lowest grades of tea. The standard of 1901 of country green teas applied in this case excluded all grades of country green tea except five, there being in all seventeen grades, and the evidence established that all but two of these were pure and fit for consumption.

Under the operation of the said act, as construed by the Treasury Department, the rights of the plaintiff and all other persons engaged in the business of importing teas are, in your petitioner's opinion, unlawfully denied, and continuous loss and injury is being inflicted upon persons engaged in importing teas into the United States.

WHEREFORE, your petitioner prays for an order advancing the argument of this case upon the calendar of the Court.

Dated New York, May 2[illegible]th, 1908.

WILLIAM J. BUTTFIELD,
Petitioner.

JAMES L. BISHOP,
JAMES H. SIMPSON,
Of Counsel.

STATE OF NEW YORK, City and County of New York, } ss.: 13

WILLIAM J. BUTTFIELD, being duly sworn, deposes and says: That he is the petitioner above named; that he has read the foregoing petition and that the same is true to the best of his information, knowledge and belief.

WILLIAM J. BUTTFIELD.

Sworn to before this 27th day of May, 1903.

LUTHER G. BILLINGS, Jr.,
Commissioner of Deeds,
New York City.

Supreme Court of the United States. 1

WILLIAM J. BUTTFIELD,
Plaintiff in Error,

AGAINST

GEORGE R. BIDWELL,
Defendant in Error.

SIR:

Please to take notice that on the annexed petition 2
of William J. Buttfield, a motion will be made in the Supreme Court of the United States, at the City of Washington, at 12 o'clock noon, on the first day of June, 1903, for an order advancing the argument of the appeal in the above entitled cause to such early day in the October Term, 1903, as to the Court may seem proper.

Yours, &c.,
JAMES L. BISHOP,
Counsel for Plaintiff.
Office and P. O. address,
135 Broadway,
Borough of Manhattan,
New York City. 3

To Hon. PHILANDER C. KNOX,
Attorney-General.

4 SUPREME COURT OF THE UNITED STATES.

WILLIAM J. BUTTFIELD,
Plaintiff in Error,

AGAINST

GEORGE R. BIDWELL,
Defendant in Error.

TO THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

5 The petitition of WILLIAM J. BUTTFIELD, plaintiff in error in the above entitled action, respectfully shows to this Court as follows:

Your petitioner requests that the argument of the above entitled cause, which is now upon the docket of this court, numbered 719, may be advanced and set down for such early day in the October Term, 1903, as may appear to the Court to be convenient.

The action was brought by the plaintiff in error in the Circuit Court of the United States, Southern District of New York, at law, to recover damages sustained by the plaintiff by reason of the alleged
6 wrongful act of the defendant as Collector of the Port of New York in preventing the plaintiff from importing into the United States certain teas. The teas consisted of seventeen hundred and ninety-two (1,792) packages, which arrived at the Port of New York, consigned to the plaintiff's firm. They were examined by the Tea Examiner under the Act of March 2, 1897, entitled "An Act to prevent the importation of impure and unwholesome tea," and rejected as "inferior in quality." A few cases were rejected as "inferior in quality—smoky fychows." The plaintiff filed a protest and the teas were ex-

amined by the Tea Board of the United States 7
General Appraisers, and also rejected for quality. The plaintiff was then compelled to export the teas within six months, under the provisions of the said act, otherwise it was the duty of the defendant to destroy them. The plaintiff protested against the action of the Collector in refusing to permit him to import the teas into the United States, and gave a bond to export the teas, and did so at considerable loss.

On the trial the plaintiff proved by undisputed evidence that the teas were pure, wholesome, free from adulteration and fit for consumption and of a high grade; that the standard with which they were compared, to wit, the standard for Country Green 8
Teas No. 7 was fixed at an extremely high grade of teas, and excluded many grades of Country Green Tea which were pure, free from adulteration, genuine, fit for consumption and of superior grades. The defendant interposed, in effect, a general denial. The plaintiff claims that the defendant, in refusing to permit the teas to be imported into the United States for consumption, and in compelling him by duress of the destruction of the teas under the said act to export the same, was not protected by the statute, for the reason that it is unconstitutional; that it deprives the plaintiff and other tea importers of their rights of property and liberty without due process of law, and that insofar as it 9
authorizes the Secretary of the Treasury to establish standards in his discretion of the quality of teas which may be imported into the United States, it is a delegation of legislative power, the right to regulate commerce being, by the Constitution, conferred upon Congress only. The plaintiff further contends that the Secretary of the Treasury had no authority to establish a standard which would exclude the importation of pure and wholesome teas of a high grade and in every way fit for consumption, and that the establishment of the standard for Country Green Teas

10 No. 7 for the year 1901 was unlawful as being in excess of the powers of the Secretary of the Treasury, and afforded no protection to the defendant in preventing the plaintiff for importing the teas in question. The Court below dismissed the complaint.

The questions involved in this case are in many respects identical with those involved in the case of this plaintiff against Nevada N. Stranahan. The main difference is that in the Stranahan case the teas were destroyed. In this case the plaintiff was not permitted to import the teas and claims to recover the damages occasioned by the exportation of the teas.

11 The questions involved are of great public importance and of special importance to importers of teas into the United States.

An attempt has previously been made to present to this Court the question of the constitutionality of the Act of March 2, 1897, in the case of Cruikshank *vs.* Bidwell, reported in 176 U. S., 73. In that case the Court held that the plaintiff had an adequate remedy at law, and did not consider the questions raised by the plaintiff as to the constitutionality of the act.

Large quantities of teas which are concededly pure and wholesome, and which are inferior to the standard in taste and flavor only are constantly being excluded from importation into the United
12 States under the authority of this act. The Secretary of the Treasury has ruled that in establishing the standard provided for in the act he may exclude the lowest grades of tea without considering the question of their purity or fitness for consumption, and he has declined to define what is meant by the lowest grades of tea. The standard of 1901 of country green teas applied in this case excluded all grades of country green tea except five, there being in all seventeen grades, and the evidence established that all but two of these were pure and fit for consumption.

Under the operation of the said act, as construed

by the Treasury Department, the rights of the plaintiff and all other persons engaged in the business of importing teas are, in your petitioner's opinion, unlawfully denied, and continuous loss and injury is being inflicted upon persons engaged in importing teas into the United States. 13

WHEREFORE, your petitioner prays for an order advancing the argument of this cause upon the calendar of the Court.

Dated New York, May 27th, 1903.

WILLIAM J. BUTTFIELD,
Petitioner.

JAMES L. BISHOP,
JAMES H. SIMPSON,
Of Counsel. 14

STATE OF NEW YORK,
City and County of New York, } ss.:

WILLIAM J. BUTTFIELD, being duly sworn, deposes and says: That he is the petitioner above named; that he has read the foregoing petition and that the same is true to the best of his information, knowledge and belief.

WILLIAM J. BUTTFIELD.

Sworn to before me this
27th day of May, 1903.

15

LUTHER G. BILLINGS, Jr.,
Commissioner of Deeds,
New York City.